

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS E. MARTINEZ,

Petitioner,

vs.

JAMES A YATES, Warden,

Respondent.

No. C 08-3911 WHA (PR)

**ORDER GRANTING PETITIONER'S
MOTIONS FOR STAY AND TO
PROCEED IFP AND ORDERING
CLERK TO ADMINISTRATIVELY
CLOSE CASE**

This is a habeas case filed pro se by a state prisoner. Petitioner moves for a stay of proceedings to allow him to exhaust some of his claims in state court.

District courts have authority to stay mixed petitions to allow exhaustion. *Rhines v. Webber*, 125 S.Ct. 1528, 1535 (2005). Such stays can, however, only be granted upon a showing of good cause for petitioner's failure to exhaust the issues before filing the federal petition, and a showing that the issues which the petitioner proposes to exhaust are "potentially meritorious." *Id.*

As to good cause, petitioner has provided evidence that his late discovery of the facts underlying his claim was due to no fault of his own, that his counsel failed to provide him with the file he needed to present the claim, and that the prison law library is inadequate to allow prompt preparation of legal documents. He has shown good cause for the delay.

As to whether the issues are "potentially meritorious," his contention that his counsel was ineffective in failing to disclose "masses" of inculpatory evidence to him while advising

1 him to reject a plea offer is a cognizable federal claim and potentially meritorious.

2 Petitioner has met the standard set out in *Rhines*. His motion for a stay (document 2 on
3 the docket) is **GRANTED**. This case is **STAYED** to allow petitioner to present his unexhausted
4 issues in state court, presumably by way of state petitions for habeas corpus. If petitioner is not
5 granted relief in state court, he may return to this court and ask that the stay be lifted.

6 The stay is subject to the following conditions:

7 (1) petitioner must institute state court habeas proceedings within thirty days of this
8 order; and

9 (2) petitioner must notify this court within thirty days after the state courts have
10 completed their review of his claims or after they have refused review of his claims.

11 If either condition of the stay is not satisfied, this court may vacate the stay and act on
12 this petition. *See Rhines*, 544 U.S. at 278 (district court must effectuate timeliness concerns of
13 AEDPA by placing “reasonable limits on a petitioner’s trip to state court and back.”).

14 In view of petitioner’s income and account balance, his motion for leave to proceed in
15 forma pauperis (document 4) is **GRANTED**.

16 The clerk shall administratively close this case. The closure has no legal effect; it is
17 purely a statistical matter. The case will be reopened and the stay vacated upon notification by
18 petitioner in accordance with section (2) above.

19 **IT IS SO ORDERED.**

20 Dated: September 2, 2008.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

THOMAS E MARTINEZ,
Plaintiff,

Case Number: CV08-03911 WHA

CERTIFICATE OF SERVICE

v.

JAMES A YATES et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 2, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Thomas E. Martinez
V-63638
Pleasant Valley State Prison
PO Box 8501
Coalinga, CA 93210

Dated: September 2, 2008

Richard W. Wieking, Clerk
By: D. Toland, Deputy Clerk